Denver Lamb Co. *and* United Food and Commercial Workers International, AFL-CIO, Local No. 7.
Case 27-CA-7337

28 March 1984

DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

On 9 May 1983 Administrative Law Judge Frederick C. Herzog issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Denver Lamb Co., Denver, Colorado, its officers, agents, successors, and assigns, shall take the action set forth in the Order, except that the attached notice is substituted for that of the administrative law judge.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In agreeing with the judge that the Respondent violated Sec. 8(a)(2) and (1) of the Act when its supervisor, Montour, solicited authorization cards on behalf of the National Maritime Union, AFL-CIO, from his son, Manuel Montour, and from employee Pat Stefanich, we find it unnecessary to determine whether Montour solicited cards from an additional number of unknown employees since his conduct in soliciting cards from his son and from Stefanich clearly demonstrates that the Respondent was unlawfully lending assistance to a labor organization in violation of Sec. 8(a)(2) and (1) of the Act.

Member Hunter agrees with the judge's finding that the Respondent violated Sec. 8(a)(1) of the Act through Supervisor Montour's threat to discharge employee Trujillo for engaging in union activity. Member Hunter finds it unnecessary to pass on the judge's conclusion that the Respondent violated Sec. 8(a)(1) of the Act through Montour's threat to discharge employee Montoya for engaging in union activity inasmuch as the finding of such an additional violation would be cumulative and would not materially affect the Order.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT assist or support Industrial, Technical and Professional Employees, a Division of the National Maritime Union, AFL-CIO, or any other labor organization, by soliciting and obtaining membership application or authorization cards.

WE WILL NOT threaten to fire or otherwise get back at employees because we learn that they have engaged in or may in the future engage in activities on behalf of a union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed by Section 7 of the Act.

DENVER LAMB CO.

DECISION

STATEMENT OF THE CASE

FREDERICK C. HERZOG, Administrative Law Judge. Based on a charge filed on June 1, 1981, by United Food and Commercial Workers International, AFL-CIO, Local No. 7[1] (hereinafter referred to as the Union) that Denver Lamb Company (hereinafter referred to as the Respondent) has engaged in unfair labor practices in violation of Section 8(a)(3), (2), and (1) of the Act, a complaint was issued by the Regional Director for Region 27 of the National Labor Relations Board on January 22, 1982. The complaint, as amended, alleges, generally speaking, that the Respondent discriminatorily failed and refused to reinstate one Paul Montoya to a job on the Respondent's loading dock following his unconditional offer to return to work following a strike, that the Respondent rendered assistance to a labor organization rivaling the Union, and that, by various other acts, the Re-

[1] At that time known as Local 641.

spondent interfered with and coerced employees in the exercise of rights guaranteed them under Section 7 of the Act. The Respondent's answer, as amended, admits certain factual allegations but denies all wrongdoing.

Pursuant to notice this case was tried before me at Denver, Colorado, on September 14 and 15, 1982. At the trial all parties were afforded the right to participate, to examine and cross-examine witnesses, and to adduce evidence and make arguments in support of their positions. Additionally, all parties were afforded the right to file briefs on conclusion of the trial.

Based on the entire record, including my consideration of the briefs filed by the parties, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent, a Colorado corporation, is engaged in the business of slaughtering and processing lambs and lamb products from its office and plant located in Denver, Colorado. In the course of this business it annually purchases goods and materials valued at more than $50,000 directly from sources outside Colorado, and annually sells and ships goods, at wholesale, directly to points outside Colorado.

I find the Respondent to be an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the Respondent's answer admits, and I find that both the Union, and Industrial, Technical and Professional Employees, a Division of the National Maritime Union, AFL-CIO (hereinafter referred to as the NMU), are now, and at all times material herein have been, labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Respondent has been engaged since its beginning in November 1979 in the business of slaughtering, processing, and wholesale sale of lamb and related products from its single plant at Denver, Colorado. Within its plant is an area known as the kill floor department, comprised of subareas known as the kill floor, the condemned room, the casing room, and the chill cooler. Also within its plant is the cooler/dock department, consisting of the offal room, a cooler, and a loading dock.

Verner Averch is the Respondent's general manager of the entire plant. Don DeBey is its foreman and Manuel Montour is its assistant foreman of the kill floor department. Each of the three men is admittedly a supervisor within the meaning of Section 2(11) of the Act. Manuel Schwab is the Respondent's cooler/dock foreman. While his status as a supervisor is not critical to the decision of this case, it was admitted by DeBey that Schwab also possesses supervisory authority.

At times material herein the Respondent employed approximately 80 workers. Of that number approximately 68–72 worked in the kill floor department, with the remaining workers distributed through the cooler/dock department or other departments, possibly such as the clerical department.

Generally speaking, at no time material hereto has any labor organization been validly recognized or certified as the exclusive collective-bargaining representative of the Respondent's employees. To the contrary, at one time the Respondent voluntarily recognized the NMU as the representative of its employees. However, the Respondent later withdrew that recognition and voided its collective-bargaining agreement with the NMU pursuant to the terms of a settlement agreement approved by the Regional Director.[2]

The Union has apparently since the fall of 1979 sought to win sufficient support from employees of the Respondent to enable its designation or recognition as their collective-bargaining representative. The record is unclear as to the reason April 1981 seemed a propitious time to engage in a strike.[3] But according to Foreman DeBey approximately 40–55 workers chose to engage in a strike which commenced on or about April 30, 1981. The strike lasted only until May 4, 1981, at which time the Union tendered to the Respondent the unconditional offer of all striking employees to return to work. The Respondent's reply was that, while each offer was accepted, employees could not then be returned to their former positions since it had no openings. Instead the Respondent advised the Union that returning strikers would be offered positions as openings occurred according to each individual employee's seniority on a preferential hiring list. And, in fact, employees were returned to their jobs in such a way that only one complaint has resulted.

B. *Issues*

1. It is alleged that the Respondent rendered aid, assistance, and support to the NMU in violation of Section 8(a)(2) and (1) of the Act by:

a. Through Manuel Montour, requesting and soliciting employees on or about April 28 and 29, 1981, to sign union authorization cards for the NMU on the Respondent's property.

b. Through Montour, on or about April 28, 1981, telling employees they would all be out on the street if they did not sign cards for the NMU

2. It is further alleged that the Respondent violated Section 8(a)(3) and (1) of the Act by discriminating against its employee Paul Montoya, in that the Respond-

[2] The settlement agreement in question has evidently not been set aside, and is not in evidence. Accordingly, it is appropriate to comment that I have engaged in the above factual recital merely to provide context for the operative facts underlying the instant unfair labor practice charge. I have not based any finding of fact or remedial provision on evidence of facts other than those demonstrating the commission of unfair labor practices in this case.

[3] While the Respondent's evidence pointed toward employees' demands for a wage increase as the cause of the strike, the General Counsel's evidence tended to show that it was employees' desires for a representational election which underlay the strike. The issue need not be decided here, for no claim is made that the strike was either caused or prolonged by any unfair labor practices of the Respondent.

ent failed and refused to reinstate Montoya to "a job on the loading dock."

3. Finally, it is alleged that the Respondent violated Section 8(a)(1) of the Act by interrogating employees, by threatening employees, and by ordering an employee to stay out of the dock area.

C. *The Aid, Assistance, and Support of the NMU*

According to the General Counsel, the Respondent, through Supervisor Montour, violated Section 8(a)(1) of the Act by interfering with and coercing employees in the exercise of rights protected by Section 7 of the Act in such a way as to violate Section 8(a)(2) of the Act, which prohibits an employer, inter alia, from interfering with the formation of a labor organization or contributing any support to it.

The General Counsel and the Charging Party have not, however, argued or presented evidence tending to establish that the Respondent has either sought to or succeeded in dominating any labor organization.

Employee Larry Montoya, a cardsigner for the Union and a participant in the strike, testified credibly regarding an incident which occurred a couple of days before the strike commenced. While on his way to lunch he saw Supervisor Montour with a group of employees. He noted that Montour had paper and pen in hand, and that a couple of employees were bent over as though filling out white, envelope size, pieces of paper, which could possibly have been authorization cards. Larry Montoya saw Montour hand similar pieces of paper to a couple of other employees. He admitted that he never saw what was written or printed on the pieces of paper. At that he turned back to where he had come from, intending to locate his father, Paul Montoya. He returned with Paul Montoya seconds later but by that time the group had dispersed. Supervisor Montour was not called by the Respondent to rebut this (or any other) testimony. None of the employees in the group was called as a witness by any party.

Employee Pat Stefanich testified that on April 28, 1981, he was in the plant's locker room with Montour during lunchtime. Montour took him into a room nearby and asked if he wanted to sign a card for "the union." Montour then asked if he had already signed a card for the Union. Stefanich responded that he had. At that Montour asked Stefanich to sign another card and explained that he would rather see the NMU get in. Montour succeeded in securing Stefanich's signature on a membership application and dues-deduction authorization which, among other things, purported on its face to designate the NMU to act as the sole collective-bargaining agent in all matters affecting Stefanich's wages, hours, and working conditions. During this same incident Montour allegedly told Stefanich that he did not want to see the Union get in because it caused plants to close by demanding wage increases. Both the General Counsel and the Respondent produced affidavits signed by Stefanich which differed in certain respects from his testimony at trial, as well as from one another. Moreover, Stefanich was quite reluctant to testify for the General Counsel, appearing only after the trial was adjourned overnight to allow the General Counsel an opportunity to secure his testimony either by persuasion or by subpoena enforcement. Nevertheless, the impression made by Stefanich throughout his testimony was that of a truthful, if somewhat imprecise, witness. In instances where he was repetitively called on to recount the thrust of his meeting with Montour on April 28, 1981, he told the same essential tale, i.e., Montour asked him about his sentiments for and against the involved unions and successfully asked him to sign an authorization card for the NMU I therefore credit him in such testimony. However, I regard his testimony regarding the possibility of plant closure, or of employees being "put out on the street" should the Union secure representation rights as uncertain, due to his self-contradiction. Accordingly, I do not credit it. As stated earlier herein, Montour was not called to rebut Stefenich.

The final piece of evidence presented on the issue of illegal assistance to the NMU was the testimony of employee Paul Montoya. Montoya stated that a week or so before the strike he observed Montour instruct his son, Manuel Montour, an employee, to sign an authorization card on behalf of the NMU. According to Montoya he overheard Montour tell his son, "Just go ahead and sign your name on it. You don't have to work about nothing else." Manuel Montour, like his father, was not called by the Respondent to rebut any of the testimony. Thus, there being no evidence to the contrary, and the testimony of Paul Montoya being neither inherently implausible nor diminished by my impression of his credibility gained from observing his demeanor, I credit Montoya's testimony concerning the incident.

I find that the General Counsel's unrebutted evidence establishes as fact that Montour did solicit employees Stefanich and Manuel Montour, his son, to sign authorization cards and otherwise support the NMU And while the evidence is less substantial regarding Montour's similar solicitation of authorization card signatures from an entire group of employees, I conclude that the direct, uncontradicted evidence of Montour's activities with Stefanich and Manuel Montour sufficiently colors the circumstances of his meeting with the group to enable a further finding that Montour solicited an additional, but unknown, number of employees to sign cards.

Accordingly, I shall find that the Respondent, which bears responsibility for the actions of its supervisors, violated Section 8(a)(2) and (1) of the Act by soliciting employees to sign authorization cards or othewise lend support to a labor organization, the NMU. *Pittsburgh Metal Lithographing Co.*, 158 NLRB 1126 (1966).

While it is clear that the evidence before me will not support a finding that the Respondent engaged in an extensive campaign on behalf of the NMU, or that it sought to either recognize or control the NMU, it has long been considered axiomatic that acts such as Montour's are illegal. By their very nature such acts require employees to honor the employer's, rather than their own, desires regarding the question of whether to select

union representation or not. *Pittsburgh Metal Lithographing Co.*, id. at 1133.[4]

I find and conclude that by soliciting and instructing employees to sign authorization cards and lend support to the NMU the Respondent violated Section 8(a)(2) and (1) of the Act.

However, in light of my credibility finding with respect thereto, I conclude that the allegation that Montour told employees that they would lose their jobs or be "out on the street" if they failed to support the NMU has not been proven. Accordingly, it must be dismissed.

D. *The Alleged Failure to Reinstate Paul Montoya*

As noted earlier herein, at the conclusion of the 1981 strike the Respondent established a preferential hiring list for the purpose of recalling strikers to their jobs as the jobs became available. Apparently the recall process worked rather smoothly, for, so far as the record shows, only one complaint resulted, i.e., that Paul Montoya was not immediately recalled to his proper position of employment.

Before the strike Montoya worked in the offal room, part of the cooler/dock department. When he applied for reinstatement at the conclusion of the strike he, like other employees, was told there was no work. It was not until June 15, 1981, that he returned to work for the Respondent. And, even then, it was not at his previous job. Instead, he was hired on a day-to-day basis as a "sticker." Montoya worked all that week as a day laborer.

On Friday of that week he went to speak to Schwab, to ask about being hired to work on Saturday. Schwab told him to check back later in the day. Montoya did so, around 2 p.m. and, on his arrival at Schwab's work station near the loading dock, observed Schwab and Averch in a discussion. He waited nearby for them to complete their talk and, as he did so, saw his son, Larry Montoya, working nearby. Montoya went over and asked his son a question. As he did so he was observed by Averch, who came over and ordered him away from the loading dock. Averch told him he did not want him talking to employees on the loading dock, and said that if he wanted to talk to them to do so at breaktime, lunch, or on his own time. Montoya became angry and left without speaking to Schwab.

Later that same afternoon Montour approached Montoya and advised him he would be better off to stay in his own department, to stay off the loading dock, and to stay out of Averch's way. Montoya stated that Montour explained that "Averch figures that you were the ring leader in this union thing because he seen you outside with Ron Bush all the time."[5] Montour continued, saying, "Vern Averch is a pretty nice guy, but you do him wrong and it be a long time before he forgets you." Montoya responded that he would stay out of Averch's way.

Around June 24, 1981, Montoya noticed that he had developed a bad rash on his arms. He surmised that it resulted from his proximity to the sheep's wool while he worked as a day laborer as a sticker. In order to alleviate the condition he thought it best to request a transfer onto the kill floor or loading dock. So he went and talked to DeBey about it. DeBey promised to see what he could do and let him know by the following day.

On Friday, DeBey said he would need until Monday to get an answer.

On Monday, June 29, 1981, Montour advised Montoya that the Respondent had decided to recall six more strikers to permanent jobs, with four going to the kill floor and two to the loading dock. That same day DeBey notified Montoya he was being recalled to a permanent job and would be placed in the drip room. Montoya objected, saying he would rather be on the loading dock. DeBey simply told him the decision would stand.

In fact, as Montoya had been told by Montour, two employees were recalled to work on the loading dock. They were Alex Payon and Montoya's son, Larry Montoya. Montoya testified that he possessed greater seniority than Alex Payon.

Thus, on Wednesday, July 1, 1981, Montoya spoke to DeBey, protesting the fact that he was not placed on the loading dock. DeBey asserted that the openings had not occurred simultaneously and went on to say that he was sorry, but he had done all that the "politics" would let him do. Montoya continued to protest, and DeBey finally said that everyone who had been working on the loading dock would be hired back there before Montoya would be placed there. He told Montoya that if someone who had been working on the loading dock quit, thereby creating an opening, he would be transferred there.

Montoya admitted, while describing his work history, that his first year with the Respondent was spent on the kill floor, "sticking and marking toes." He then transferred to the loading dock, but stayed there only a couple of days before transferring to the offal room in the cooler. After the strike ended he was given day labor jobs for a while until he was recalled to a permanent job. When he was recalled he was put in the drip room. Montoya described the difference between the drip room and the offal room; he said that the former was merely cold while the latter was both cold and damp.

In any event Montoya worked in the drip room until January 1982, when he developed bursitis in his shoulders. He thereon went to DeBey and requested another transfer for medical reasons. He was subsequently transferred to the unloading dock.

All this occurred after Montoya was offered the precise same job he had held prior to the strike, working in the offal room. So far as the record shows Montoya was offered his old job as soon as it became available. Montoya turned this offer down since, based on DeBey's facial expression during a conversation they held concerning the matter, he surmised that the Respondent "didn't really want him" back in the offal room.

Based on these facts, all of which are undisputed or drawn from the testimony of Montoya, I cannot con-

[4] Counsel for the General Counsel cited no authority in support of his position on this point in his brief. The Charging Party's citations were uniformly erroneous. And the Respondent's citations were inapposite.

[5] A reference to the fact that Montoya had served as the Union's strike captain and accompanied the union representative, Bush, when Bush went to the Respondent's premises on May 4, 1981, to deliver the Union's letter offering the unconditional return to work of all strikers.

clude that Montoya has been the victim of discrimination at the hands of the Respondent.

Clearly, under the rules announced in *Laidlaw Corp.*, 171 NLRB 1366 (1968), Montoya was entitled to full reinstatement on the departure of his replacement in the offal room. The rule is that economic strikers who unconditionally apply for reinstatement at a time when their positions are filled by permanent replacements: (a) remain employees, and (b) are entitled to full reinstatement on the departure of replacements unless they have in the meantime acquired regular and substantially equivalent employment, or the employer can sustain his burden of proof that the failure to offer reinstatement was for legitimate and substantial business reasons.

In this case it seems that Montoya received all that the rule calls for, and more.

First of all he was hired as a day laborer. An employer is obliged to consider all prospective employees in a nondiscriminatory fashion. But the record before me will not support a finding that the Respondent was obliged to offer Montoya as a day laborer pending his reinstatement to his former position.

Secondly, Montoya was offered a permanent position, in the drip room.[6] And once again it does not appear that the Respondent owed him this opportunity.

Thirdly, as he admitted, when Montoya's old job did come open in February 1982 it was promptly offered to him. He turned it down.

Finally, in two instances Montoya was afforded favorable treatment to enable him to escape medical problems. The first was when he asked for and secured a transfer away from the day-labor work as a sticker, which had caused him a rash. The second was when, in March 1982, he finally succeeded in securing a transfer to the dock, on account of the bursitis in his shoulders.

The parties dispute whether employees were to be called back from the strike based on their plantwide seniority or on their departmental seniority. I make no finding on this point, except that I regard the evidence as too sketchy to support the General Counsel's burden of showing that departmental seniority was to prevail. Certainly the Respondent's letter of acceptance of the employees' unconditional offer to return to work makes no reference to any such seniority plan, and any testimony offered on this point was, in my view, too generalized to be persuasive. Indeed, even Montoya testified that no specific type of seniority was specified to be used in recalling employees.

Lastly, the evidence of an intent to discriminate against Montoya is not convincing.

The incident in which Averch ordered him away from the loading dock was plausibly explained by DeBey, who testified that the Respondent had a longstanding rule against employees being out of their work areas, or interfering with the work of other employees in other departments. Montoya acknowledged the existence of the rule,[7] as well as the fact that he had been warned about violating it several times even preceding the strike. Moreover, Montoya admitted that when Averch ordered him away from the loading dock Averch had no way of knowing that he had come there for a legitimate purpose, to speak to Schwab about obtaining work on Saturday. And instead of enlightening Averch or Schwab about the purpose of his visit Montoya simply gave in to anger and walked away. Thus I cannot conclude that Averch said or did anything illegal when he spoke to Montoya. In effect, albeit abruptly, he simply told him to go back to work, to avoid interfering with other employees, and to abide by the Respondent's rule.

Thus, the warnings given Montoya by Montour later that day seem somewhat less sinister than when viewed in isolation. True enough the remarks of Montour contained a threat and demonstrate a linkage in Montour's mind between Montoya's union activities and the prospects for an untimely end to his career with the Respondent. Such statements are impermissible and violate Section 8(a)(1) of the Act.[8] But a finding that the remarks violated Section 8(a)(1) is not the same as finding the remarks sufficient to demonstrate an intent to discriminate, particularly when the discrimination would necessarily have been practiced by Averch or DeBey, rather than Montour, the person who committed the 8(a)(1) violations. Instead, taking into account all the evidence that Montoya was not the victim of discrimination, and was instead the recipient of favorable treatment, I find that Montour's remarks furnish an inadequate basis for a finding that the Respondent violated Section 8(a)(3).

Accordingly, taken as a whole I conclude that the General Counsel's evidence does not support the alleged violations of Section 8(a)(3) and (1) and shall dismiss them.

E. *Additional Violation of Section 8(a)(1)*

Employee Raymond Trujillo, a credible witness, testified that he had been employed by the Respondent on its kill floor for about 2 years before the strike. He signed an authorization card for the Union about a week preceding the strike, in addition to passing cards to other employees on behalf of the Union.

About 3 days before the strike began Trujillo was working in the corral when he was approached by Montour. Montour asked him if he liked making the money he was making. Trujillo responded that he did. Montour then told him that if he liked it he would quit passing out cards for Local 7, the Union.

Again, Montour was not presented as a witness by the Respondent, and Trujillo's testimony stands unrefuted.

I conclude that Trujillo's testimony amply establishes that the Respondent must be held responsible for threatening to discharge an employee should he persist in his

[6] According to DeBey, in its selection of Montoya for work in the drip room the Respondent's intent was to place Montoya on "light duty." Montoya agreed that the work in the drip room could be so characterized.

[7] Stipulated to be a requirement of the U.S. Department of Agriculture.

[8] As this point was fully litigated without objection from the Respondent I have no hesitancy in finding a violation dispite the fact that it was not alleged in the complaint.

activities on behalf of the Union. Such a threat is clearly violative of Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. The Respondent, Denver Lamb Company, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union and the NMU are labor organizations within the meaning of Section 2(5) of the Act.

3. By soliciting employees to sign authorization cards on behalf of the NMU, a labor organization, or otherwise to lend support to it, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(2) and (1) of the Act.

4. By threatening employees with discharge or other reprisals if they engaged or continued to engage in union activities, including, among other things, passing out union authorization cards to fellow employees or serving as a strike captain on behalf of a labor organization, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

5. The Respondent has not violated the Act in any manner except as specified above.

6. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER[9]

The Respondent, Denver Lamb Company, Denver, Colorado, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Lending support or assistance to Industrial, Technical and Professional Employees, a Division of the National Maritime Union, AFL-CIO, or any other labor organization, by soliciting or obtaining employee signatures to membership or authorization cards.

(b) Threatening to discharge, or exact other reprisals from employees if they have engaged in or continue to engage in union activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the right to self-organization, to join, form, or assist labor organizations of their own choosing, to bargain collectively through representatives of their own choosing, and to engage in other protected activities for the purpose of collective-bargaining or other mutual aid or protection.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Post at its Denver, Colorado facility copies of the attached notice marked "Appendix."[10] Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[9] All outstanding motions inconsistent with this recommended Order are hereby denied. If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[10] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."